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To the Public

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TO THE PUBLIC.

Two pamphlets, one a petition addressed to Congress, and the other purporting to be an expose of my conduct, lately published by a person named Gaspard Tochman, are thought, by some of my friends, of sufficient importance to deserve the following reply. A few days delay have occurred in procuring certain statements and proofs, necessary to a full understanding of this subject, since I was able to procure copies of these papers, which was not till the 21st instant; as, although I wrote to Baltimore for them, and my friends there have informed me they mailed them for me, not one has yet been received by me from that city.

In the year 1842, I was applied to by Mr. Ignatius Chutkowski to represent him as one of the claimants of the Kosciusko estate. He soon discovered he had no claim. He then, in the year 1843, obtained from the Estko branch of the heirs a power of attorney to represent them, and an agreement for compensation. He then desired to retain me as their counsel. This was at once declined, because I very well understood that their interests were confided to the Russian Minister, by whom they had been committed to the charge of Messrs. Fendall and Smith. In the fall of 1845, I was applied to by Gaspard Tochman to move his admission to the bar of the Circuit Court, and did so. He had previously desired to retain me as counsel for the Estkos, from whom he represented himself as having a full power of attorney. This turns out now to be the same power Mr. Chutkowski had obtained, as I have stated, in 1843. I declined, because I considered it unprofessional in any manner to interfere with a case in the charge of professional gentlemen, my frends, Messrs. Fendall and Smith, being still in charge of it. He then, without my knowledge, applied to Mr. Bodisco, in a letter, dated 23d November, 1845, referring him to a letter from Mrs. Estko to Mr. Bodisco, dated 6th April, 1844, requesting him to retain me as counsel. A few days after this, I was invited by Mr. Fendall to an interview, which resulted in my being definitively engaged to take the place of Mr. Smith, who had withdrawn, as will more fully appear by Mr. Fendall's letter, No. 2, with the distinct understanding between him, myself, and Tochman, that he (Tochman) could not be recognised by Mr. Bodisco as counsel, but that we would consider him as such. The first step to be taken was to give security for costs, and this led to our agreement with him. (See No. 3.) The next was a bill to suspend the execution of a decree which had been passed by the Circuit Court, ordering the payment of a large sum of money, part of the said estate, to Mr. Kosciusko Armstrong; and a petition also was prepared and filed in the Orphan's Court, which we deemed a primary and important movement.

These things being done, we were surprised by an editorial notice, which appeared in the National Intelligencer, and gave this individual a prominent position in the direction of the cause, and which also is appended hereto, marked No. 4.

On the 9th of January, 1846, Mr. Fendall gave me the information stated in my note to Tochman of that date, and requested me to communicate

E207
.K8T59

with Tochman. I did so, and with his knowledge and advice wrote the letter marked No. 5. This was shortly afterwards answered by Tochman in person. We had a conference, at which he at first appeared to be greatly excited, claimed the right to the papers, and complained of Mr. Bodisco's assumption of authority, as he called it. I sympathized with him quite sincerely, but succeeded in soothing him, and, as I supposed, in satisfying his judgment, for it is certain that he assented to the plan proposed in that letter. The letters of attorney were prepared by Mr. Fendall; one of them was read over to Tochman by me, and he, from that time till January, 1847, acquiesced in them. His letter of the 12th March, (published by him,) surprised me, but I considered it an ebullition of passion which would soon pass away, or that he felt himself in a stronger position then, and relied on my sympathy with him, and hoped by that means to induce me to unite with him in some course different from that we had adopted. We continued to correspond till the fall of that year, when he came to Washington, and was almost daily in my office, having access to my books, papers, and any thing he wanted; and not a jar, or word of unkindness, occurred between us till about the month of December last. He then undertook to act independently of us, and, against our objections and remonstrances, filed a bill, quia timet, against the administrator of the estate, and without my knowledge signed my name to it. I felt dissatisfied, and spoke to him freely, but calmly and gently. The next morning I found in my office the letter from him marked No. 6. We still proceeded harmoniously together, and on the fourteenth of January, 1847, I received the note marked No. 7, relating to business in the Orphan's Court. On the 18th of January, 1847, I was engaged in an upper room in my office, and on coming down stairs I found him at my desk writing the fragment No. 8. My entrance interrupted his writing, and we continued the subject by conversation, which ended with our agreeing to meet again on the morning after the morrow of that day. Up to this time he was acting towards me, and professing to feel for me, the warmest regard, respect, and esteem as *a friend:* and I had not then had the slightest reason to doubt it. Is it not, then, almost incredible that he had then written and sent to Mr. Bodisco the letter of the 18th January, 1847, now published by him? Yet such was, I believe, the fact. Surely, very little more is necessary to show his character. Add to this, that I had opened my house to him, introduced him to my family and friends, felt and exhibited the warmest and most active sympathy for him as a Pole and exiled patriot—all of which my friends well know. To proceed, however: that letter of the 18th January, 1847, was immediately forwarded by Mr. Bodisco to Mr. Fendall. Before we could see Mr. Bodisco, and obtain his leave to use it, Tochman, on the morning of the 21st came to my office, smiling, and, to all appearance, as friendly as ever. I told him I was engaged, and immediately walked out, (See No. 9,) and went to Mr. Fendall's office, where he followed me, and endeavored to enter into conversation with us. We received him and treated him with the utmost coolness, but he persisted, till Mr. Bodisco was announced in Mr. Fendall's dwelling. Mr. F. went in to see him, returned immediately, and invited me to walk in. I then asked Tochman to remain till I had seen Mr. Bodisco, as I might after that have something to say to him. He declined this, and went away. We obtained Mr. Bodisco's authority to use the letter of the 18th January, and then addressed to Toch-

man the letter he has published, marked K; his reply, marked L, and our rejoinder M, as published by him, followed in order. This terminated our connexion with him.

It is not my purpose to reply to the letter of the 18th January, 1847. I leave the public to judge of the weight his evidence should have against Mr. Fendall's and Mr. Smith's letters and my character.

It will be seen that I was not, as he has asserted, employed by him. I was invited to come into the causes by Mr. Fendall, (Mr. Fendall acting under the authority of Mr. Bodisco,) and Mr. Bodisco, in addition to his general charge, had been specially requested by Mrs. K. Estko to retain me, by her letter of the 6–10th of April, 1844, an extract from which is annexed, marked No. 10; that the agreement between Mr. Fendall, Tochman, and myself, was made in good faith; that Tochman then understood he could not be recognised by the Russian Minister as counsel, because of his relation to the Russian Government, but that this consideration did not prevent our private association with him; that he knew that all the important proofs in the cause had been placed in Mr. Fendall's hands by the Russian Minister, who had a right to reclaim them; that, with this full knowledge and understanding, he caused a publication to be made, which placed him before the public in a prominent position as counsel, and might embarrass the Minister with his Government; that he was advised of the effect which this publication had produced, and of the means by which it could be obviated; that he distinctly assented to, and acquiesced in these means; that for more than a year he continued his association with us, until he thought "the pear was ripe," as appears by his letter to Mr. Bodisco; that during all this time he did not pretend to, or exhibit, any suspicion or want of confidence in us; but, on the contrary, almost to the last moment professed, towards myself at least, the utmost respect and confidence; and finally, while keeping up this shew, wrote to Mr. Bodisco a letter containing the most injurious, calumnious, and unfounded accusations against us; concluding with an "overture" (?) to the same person whom he had been denouncing to the President, and whom he now seeks to vilify and traduce.

And here, before I proceed further, let me state distinctly and explicitly, that so far as my knowledge, information, or belief, enables me to speak, Mr. Bodisco has never in any manner attempted to control, direct, or advise our action. He has always expressed a lively interest in, and been ready and prompt, as far as was in his power, to aid in the advancement of the claims and pretensions of the heirs of General Kosciusko to the property and estates which he left in this country. But so far as my knowledge or information extends, he has not directly or indirectly interfered in any manner with the proceedings in the courts, or the management of the causes, except in the single instance, when, upon the application of Mr. Fendall and myself, he addressed his letter to the Judge of the Orphan's Court. It is true, a statement was made by one of the letter writers for a New York paper, to the effect that Mr. Bodisco had endeavored to cause the arrest of this man Tochman; but the author of that letter, who I understand derived his information from Tochman himself, was afterwards fully satisfied of the falsity of that accusation. It is also due to Mr. Bodisco to state, that he has uniformly deported himself in this matter not only with the courtesy which distinguishes him in society, and the judgment, discretion, and dignity which becomes his office, but with the kindliest feelings, and the most

apparent anxiety to advance the interests of the subjects of that country which he has so long represented near our own Government.

As to the libel on the court, contained particularly in "The Petition," it is not necessary to say a word.

Shortly after the letter written by Mr. Fendall and myself to Col. Brent, [and published by Tochman, letter N,] Tochman endeavored in the Orphan's Court, to take the direction of the affairs into his own hands. Mr. Fendall and I resisted him successfully, and in the course of the trial much passed to produce excitement. After the Court had adjourned, Mr. Fendall and I remained in the room in conversation, and Tochman approached, and attempted more than once to mingle in it. At last, I calmly requested him to allow us to confer alone, adding, that we had already written to him to desire that all intercouse between us should cease. He wished to know why I could not speak with him. I replied, if I did, I feared I should give him offence, and if I did not, he seemed disposed to take offence. He then said, as I thought menacingly, why can't you speak with me? Up to this moment I was entirely cool, and had carefully avoided giving him any offence. I was irritated by this, and replied, "because I do not think you a gentleman." He retorted with much heat, "I am as much a gentleman as yourself;" and I rejoined, "I do not bandy epithets with a blackguard; I have told you I did not consider you a gentleman, and that is enough." He then passed in front of me to the door of the court room, which was a few paces off, and said something about my writing letters. I will not be positive about his words, for I was greatly irritated, and I advanced a step and said: "stop, if you say that I have written a word that is not strictly true, you are a liar, and a scoundrel," and pausing a moment, looking at him, I added, "and I fear you are a coward." He made no reply; nor from that time forth, for more than nine months, did he take notice of it. (See No. 11.)

In the Circuit Court in the spring, I believe in the month of April, he was so personally offensive and insulting to me, that some of the members of the bar called my attention to it. I then said aloud in his hearing, in substance, "that I had long ago used to him such terms of opprobrium, as no gentleman would submit to, and I had nothing further to say to him." See No. 12. Yet, during the same term, about the 2d of June, as I closed an argument before the Court, and after we had had a very disagreeable controversy as to my right to appear in the case, he rose and said, "I adopt the first part of Mr. Bradley's argument, but I protest against the last, and ask the court to take notice of my protest, because it is intended to benefit the *defendant*." [He meant to say the *complainant*.] I called the attention of the court to this grave and serious accusation; and, as I did not get an immediate response from them, I threatened him "with personal chastisement before night, and told him he might prepare himself for it, unless the court took notice of it, and he retracted and apologized." The court did then take notice of it, and summarily rebuked me. They stopped the proceedings in the cause, and required him to retract and apologize. He says he refused. He forgets that he at first denied the charge; that it was distinctly proved on him by R. S. Coxe, esq., and John A. Smith, esq., for the information of the court; that he then admitted it in a qualified form, and did retract and apologize. [No. 13 and 14.] I did not press the matter further, and the court let it drop.

At the last term of the Circuit Court, Mr. Fendall and I moved the court for leave to file a bill, in the nature of a bill of review, in behalf of Capt. Wankowicz. It was a matter with which Tochman had nothing to do; but, if successful, must be greatly for the benefit of our contested clients, the Estkos. It was resisted on the ground, among others, that, in a former proceeding in the same cause, [the bill of review which had been filed while Tochman was associated with us, and which had been dismissed on a demurrer, the same bill which was drawn by me,] we had used the name of Capt. Wankowicz as one of the heirs of Kosciusko. Capt. Wankowicz had made an affidavit that he knew nothing of that proceeding, and had not authorized or employed any counsel to appear for him. This was undoubtedly true. The case was argued on the 2d Nov., and I admitted that we had appeared under a mistake of the extent of our authority; and I argued that, as we believed it necessary to use the name of all the heirs in that proceeding, and he was one, we thought, in order to protect the interests of those we represented, we had a right to use his name. That we had certainly acted in good faith, and a Court of Equity would not, in a case of a clear mistake of authority, hold Wankowicz responsible for the acts of the counsel. To my very great surprise, I was repeatedly interrupted by Tochman, who affirmed that he had acted in that matter under an "*implied power of attorney.*" This produced a laugh; and, among other things, he said he would not sit still and bear such insults. The court in vain tried to keep him in order; but I did not reply or retort, or otherwise notice it. At last I had gone to another ground. Mr. Coxe had argued that, even in cases where the attorney had fraudulently appeared, the Court would hold the party bound by his acts. In reply to this, I had begun to comment on a case cited by him, and to shew that they were cases at law. I stopped and said, it is not necessary, however, to press this matter, for no such charge is made here; and I presumed the Court could not imagine there was any ground for it. At this time I was suddenly interrupted by Tochman. He had been sitting at the District Attorney's seat, which is not on a line with the bar, and is twelve feet distant from where I was standing. He arose, with great violence in his manner and tone, and, in rising, passed still further from me, and into a position which put the long table at the bar, and the District Attorney's table both, between us; as he arose, he exclaimed, "if there is any fraud, *Mr. Bradley and Mr. Fendall are guilty of the fraud.*" I had cast no imputation on him, I had made no insinuation against him, I had not referred to him, and I was not thinking of him. He did not utter another word after these, and immediately dropped back into the seat from which he had arisen. He made no reference by word or deed to any agreement, or any thing else. On the impulse of the moment, I rushed upon him to strike him; the chairs ranged along the front of the table, and a gentleman, occupying one of them, with his book on the table, impeded my progress, so that I could not reach him till he had completely sat down, and gave me a moment's time for reflection. He is a younger man than I am, as large, and apparently more active; yet he offered no resistance, but rather turned from than towards me. Provoked beyond endurance by his conduct, I then did say, "you dirty scoundrel and coward, I will kick you out of Court if you do not behave yourself." He says he replied "TRY." It may be so, I did not hear it. He muttered something, with his face turned from me, but whatever it was, it was

not distinctly audible, and was after I had collected myself. But I did distinctly hear him immediately appeal to the Court for protection. There was no one between us; I had passed by the gentleman who was sitting at the bar; the Deputy Marshal did not come there till I had sat down. This was all wrong, I freely admit. My excuse must be found in the suddenness and unprovokedness of the attack, and the impulses of human nature. The accounts, given by eye and ear witnesses of this transaction, are hereto appended.

On the 15th Nov., I received a letter, requiring me to retract and apologize. This led, ultimately, to his sending me a challenge, which, of course, I declined.

So far I have studiously avoided the use of any epithets not necessary to a full understanding of this narrative; my object being to present facts by which the public can judge what right this man had to expect any further notice from me. If his object is notoriety, I hope the proof I have furnished will gratify his fullest desire.

It may be asked why I did not accept the proposition of a reference of the matter in dispute. There were two very good reasons; the first, that he had positively denied what so many persons knew to be a fact—that he had charged me with fraud; and there was no room to refer that question; and besides, his whole conduct, from his first letter to Mr. Bodisco, 18th January, 1847, to this time, had been so inexcusably bad, that I greatly doubted whether I could get a friend who, knowing the facts, would have undertaken the commission. And second, in conferring with calm, considerate, and judicious friends, they thought there was another sufficient reason, which it is not necessary to notice.

The letters and statements which I have appended hereto, giving accounts of these various personal matters, are in reply to letters and requests made by me; the publication of which would only swell these pages to a most unreasonable size.

JOS? H. BRADLEY.

December 22d, 1847.

[No. 2.]

WASHINGTON, *February* 23, 1847.

MADAM: Some recent proceedings, affecting the interests in this country of the heirs of the late General Kosciusko, induce me to make to you the following statement:

Some time after the death of the late Mr. Swann, I was invited, by Mr. Thomas Swann, jr., one of his sons and executors, with the consent of the Russian Minister, Mr. Bodisco to succeed the deceased, Mr Swann, as one of the counsel for the heirs of General Kosciusko, in prosecuting their claim to the fund left by him in the hands of the late President Jefferson. The negotiation, after being apparently concluded, was ultimately broken off by the refusal of the heirs of Mr. Swann, (who looked to the contingency of success in recovering the fund for the remuneration of the services he had rendered,) to provide, or to contribute to providing, any means for defraying the costs and charges of litigation. The papers which Mr. Swann, jr., had handed to me for examination, I was requested to return to the Russian Minister, from whom they had, as he stated, been received. Mr. Bodisco declared himself to be without authority to make any provision for expenses, but promised to communicate with the heirs on that subject, as well as on the subject of compensation for the services asked of me. I stated to him that I should, of course, prefer the compensation to be in the usual mode of a retainer, but, this being understood to be inconvenient, if not impracticable, that I would consent to engage for a compensation con-

tingent on the result, if the rate of it were first fixed. These two points, a provision for the current expenses of the contest, including the costs of court, costs of collecting testimony, cost of translations, &c., and the fixing of the rate of compensation, I insisted on, as preliminary to any absolute and positive engagement on my part.

I had several interviews on the subject with Mr. Bodisco, who always manifested the most friendly solicitude for your interests, and whose position, knowledge of business, and energy, have enabled him to render to you most essential aid. At one of the interviews referred to, I suggested to him the association with me of Mr. Bayard Smith, the probable labor of the case being such as to require more than one counsel, under any circumstances; and it being likely, moreover, that official duties, with which I was then charged, might require my presence in another court, at times when some action on the part of the counsel for the heirs might be wanted. Mr. Bodisco, knowing, as well as myself, the merit, professional and personal, of Mr. Smith, readily adopted the suggestion. Mr. Smith concurred in my views as to the two preliminary points. Mr. Bodisco answered as before. We expressly disclaimed any definitive engagement as general counsel in the case, till those points should be adjusted; but agreed to attend to one part of it, which was then pressing. Had you sufficiently known or considered this fact, you would not, I presume, madam, have lent a willing ear to some complaints which have been made to you.

Mr. Smith and myself thought that when we consented to undertake an old, complex, and troublesome case, which might last for years, for a compensation contingent on an event which might never happen, we consented to all that the liberality of counsel could be expected to grant, or the delicacy of clients to accept. We considered it as utterly out of the question, in addition to all this, that we should assume any pecuniary responsibility, to say nothing of other objections to carrying on the suits at our own expense. And, on the head of expenses, I would mention, that in our courts the agency of several officers, among whom is the clerk, is necessary in the conduct of a suit; that the remuneration of these officers is made, not by a salary from the Government, but in the form of fees paid by the parties in each particular case; and that the clerk is not obliged by law to render any services to absent plaintiffs, which they do not secure the payment of. This is usually done, either by some resident citizen becoming security, or by depositing a fund with counsel for that purpose. It was the payment of these fees, and the other occasional expenses incident to such a controversy, for which we desired the heirs to make provision. And in so desiring, I cannot see that we deserved the imputation of being "interested persons," in a derogatory sense of the term, any more than a stranger in Europe would do, who should decline expending his money for some purpose of ours in that country, without being indemnified. This condition proceeded undoubtedly from a proper regard to our own interests, but I am at a loss to see how it implied any neglect of yours. At all events it *was* a condition, and one uniformly adhered to by Mr. Smith, with the exception before indicated, and by myself, until the occurrence of events about fifteen months ago, which will presently be noticed.

The exception referred to was the claim of Klimkiewicz, which while we were awaiting a communication from your family, assumed an alarming aspect. His pretensions were sustained by testimony apparently strong. We were without legal evidence to substantiate your claim, the papers sent being informal and not such as we had called for, and even if they had been furnished according to instructions, they would not have been availing without an answer to Klimkiewicz's bill. An answer was prepared by Mr. Smith, and sent to Poland through the Russian legation, in order to be signed, authenticated, and returned to us. But it never came back, though we repeatedly urged upon the heirs, through the same medium, the pressing necessity of our having this document and the proofs, in order to prevent a decree in favor of Klimkiewicz. This was, however, fought off from time to time, until at length that individual died, and the suit abated. It has not been revived.

In the fall of 1845 a stranger called on me, introducing himself as Major Tochman, and as the writer of a letter which I had before received, stating that he was employed to cooperate with me as assistant counsel in prosecuting the claims of the next of kin of General Kosciusko. Being particularly engaged at the time, and desiring to confer with Mr. Smith before going into details with a person of whom I knew nothing, I requested him to call again. Before he did so, I had seen Mr. Smith, who agreed with me, that as our whole authority in the case was received from Mr. Bodisco, it was proper that he should be consulted on the subject of Mr. Tochman's proposition; and I accordingly so informed Mr. Tochman on his next visit. When I stated to Mr. Bodisco the application which had been made by Mr. Tochman, Mr. Bodisco answered, that the interest of the claimants had been confided to his charge, as the representative, in this country, of the Russian government, and in consequence of their earnest appeals to the Emperor for his interposition;

that the political relations, which he minutely explained, of Mr. Tochman to the Russian government, were such as to make it wholly impossible for its minister to recognise him as counsel or agent in a case under its superintendence; but that he had no objection to any private arrangement which Mr. Smith and myself might think proper to make with Mr. Tochman; and indeed thought that such an arrangement might be expedient, inasmuch as Mr. Tochman's knowledge of the Polish language might render him useful as a translator. At my next interview with Mr. Tochman, I communicated to him these views of the minister, and took especial pains to impress on his mind the propriety, and indeed necessity, in the event of any agreement with him, of avoiding any step which might, in Mr. Bodisco's judgment, tend to compromise that minister. On this occasion some conversation ensued as to the details of the case. I explained to him the circumstances and the extent of my professional connexion with it; my desire that, before that connexion should be made absolute, some understanding should be had as to the rate of compensation for the services of counsel, and especially that some provision should be made for actual expenses. On this latter point I felt the more free to insist, because, in the course of his remarks, he stated that one of the claimants was in independent, perhaps wealthy, circumstances. Mr. Tochman adverted, with an appearance of dissatisfaction, to a statement which he had heard, that Mr. Smith, my associate in the case, was a relation of Col. Bomford, the administrator. I answered, that the information was new to me; that I did not believe it to be correct, (as in point of fact it was not;) and that, even if it were, Mr. Smith was a gentleman of scrupulous and well known honor and integrity, and could not be influenced by such a consideration in the discharge of a professional duty to a client. Mr. Tochman read to me a portion of some paper in his possession, purporting to express a wish on the part of the claimants, or some of them, that Mr. R. S. Coxe or Mr. Bradley should be associated in the prosecution of their claim. I informed him that Mr. Coxe was employed on the other side, but that Mr. Bradley was, I presumed, disengaged, Mr. Chutkowsky, who had consulted him, having abandoned the position of being himself a claimant; remarking, also, that Mr. Bradley was among the most able and distinguished members of the American Bar. After this conversation, Mr. Smith and myself again called Mr. Bodisco's attention to our position in the case, and to the points which we had often before desired him to submit to the heirs. The minister being still without authority on these subjects; the aspect of the case being such that the interests of the heirs required immediate action, and Mr. Smith having resolved to retire from the case, Mr. Bradley expressed his willingness to take Mr. Smith's place, and to share with me the pecuniary responsibility which I had before uniformly declined to assume. I waived my objection on that head, and conferred with Mr. Bodisco, who cordially sanctioned the association of Mr. Bradley. On the 28th or 29th of November, 1845, Mr. Bradley, Mr. Tochman, and myself, entered into a written agreement to give the necessary security, and to go on with the case conjointly; the compensation to be left for future adjustment with the heirs, but fixed as between the parties to the agreement. Within a few days afterwards, a paragraph appeared in the National Intelligencer ostentatiously announcing Mr. Tochman's professional connexion with the case—a publication doubtless made at his instance, and in utter disregard of the caution I had so earnestly endeavored to impress on his mind, as being essential to the interests of the heirs. The publication excited, as was to have been expected, the displeasure of Mr. Bodisco. He required either that we should prepare a power of attorney to myself and Mr. Bradley alone, or that an early day should be appointed for the return of the papers which had been placed in my hands. This proceeding was made known by Mr. Bradley to Mr. Tochman, with a distinct assurance that, if the proposed power should be executed, it would not be used in prejudice of the agreement of November, but that, on the contrary, it was the fixed purpose of both Mr. Bradley and myself to carry out that agreement in good faith; the power being, so far as we were concerned, wanted only to meet the difficulties of Mr. Bodisco, and to avert ill consequences. The provision in it for compensating counsel, Mr. Tochman would have had the full benefit of under our agreement.—Though at first manifesting high displeasure at this suggestion, he repeatedly afterwards expressed his acquiescence in it. Two powers of attorney were sent to Mr. Bodisco on the 23d of January, 1846—one to be executed by the Estko, and the other by the Zulkowski branch of the claimants. The case being started by the engagement of Mr. Bradley and myself to become responsible for expenses, has since been prosecuted with all possible despatch. On examining the proceedings had while it was under the care of the former counsel, Mr. Bradley suggested a course of action in some respects different from that of the original counsel, and for reasons which commanded my cordial assent. He took the leading part in carrying out the plan which he proposed. Being of opinion that additional security from the administrator was necessary, and the existing law not meeting

the exigency, he prepared an amendment to the law, procured for it the recommendation of the Grand Jury, submitted it to the proper committee of Congress, and it was enacted into a law. Under that law was prepared a petition to the Orphan's court; and that tribunal required the administrator to give additional security in the amount of $20,000, which was done. This was not satisfactory to us. Mr. Bradley afterwards prepared a petition for further security, founded, in part, on information given by Mr. Tochman, which he failed to make good by proof. The petition was dismissed; and we reserved the right of appealing from the order dismissing it, to the circuit court. On the very day of the dismissal, one of Col. Bomford's counsel informed me that the course of Mr. Tochman to Col. B. had been personally so wantonly injurious and offensive as to determine Col. B. and his counsel to resist his proceedings; but believing that Mr. Bradley and myself were influenced purely by a sense of professional duty in our acts, and that we were sincere in the opinion we had expressed that the administrator ought to give additional security, Col. Bomford's counsel would recommend him to give it in such amount as Mr. Bradley and I thought necessary, in advance of the compulsory proceedings which we meditated. I was pleased at the suggestion, because, if acted on, it would avoid the delays which the law enabled the administrator to oppose to such proceedings, and the expense and trouble incident to them. On conferring together, Mr. Bradley and I thought $40,000, additional to the $20,000 already given, would be sufficient. This opinion was promptly communicated to Mr. Tochman, who cordially concurred in it. Col. Bomford was informed, through his counsel, of our assent to the proposed arrangement. It was finally agreed on; the bond was prepared; and the filing of it was delayed only till a deed of trust for the benefit of the sureties could be completed. To all these facts Mr. Tochman was privy. He even knew who the sureties were, and expressed entire satisfaction with them. In this state of things a notion, which he had before conceived, that a proceeding in chancery, called a bill *quia timet*, was the right course, again took possession of his mind. Mr. Bradley and myself opposed the measure, as well on the ground of its inherent unfitness for effecting the object in view, and of its probable failure under our local law, as of its tendency to prevent the consummation of the arrangement already made for effecting that same object. He nevertheless persisted in filing the bill; and though in a letter of his, which will presently be noticed, he admits that both the counsel associated with him were adverse to the measure, and indeed relies on that fact as enhancing his own particular merit, he took upon himself to sign the name of one of them, Mr. Bradley, to it. The effect of this crude and reckless experiment was very nearly to defeat the arrangement already agreed on for the bond—Bomford and his counsel feeling indignant at the movement as a breach of faith. This evil, however, was averted, and the bond was filed.

The omission of the heirs to take the steps necessary for the defence of their interests, had enabled Kosciusko Armstrong to advance his claim to a legacy, under the will of 1806, to the stage of getting a decree for the payment of the money. In the conferences of counsel, after the agreement of November, 1845, the cases of the Estkos vs. Lear, and Armstrong vs. Lear, printed in the reports of the Supreme Court of the United States, were examined and considered; in which cases are noticed two subsequent wills of General Kosciusko. Copies of these wills were filed as exhibits by Klimkiewicz, and Mr. Bradley so informed Mr. Tochman, and, indeed, showed them to him. In order to arrest the proceedings in Armstrong's case, it was determined to file a bill of review, which was accordingly prepared by Mr. Bradley, and filed. Thus the execution of the decree in that case was suspended. Mr. Bradley prepared an elaborate petition to the Orphan's Court, praying leave to contest in that Court the will of 1806. The application was resisted by the opposite party; the Orphan's Court decided in our favor; an appeal was taken to the Circuit Court, which was there most ably and elaborately argued by Mr. Bradley. Mr. Tochman was not at that time in this city, and, had he been here, could not have rendered the slightest service. The Circuit Court decided in our favor; the preliminary question and the case went back to the Orphan's Court. We there availed ourselves of a particular provision in our local testamentary law, to request an issue to be sent to the Circuit Court, to enable us to obtain proof of the execution of the will made in 1816, at Soleur, in Switzerland. Under precise instructions from Mr. Bradley, Mr. Tochman wrote to a correspondent in Paris to get an exemplification of that will. The document was received, and offered for record in the Orphan's Court. Mr. Tochman having failed to follow strictly his instructions, some further proof was necessary, which he was instructed how to obtain here, and did obtain.

In the farther progress of the Armstrong case, it was necessary to file an answer to the bill. This was prepared by me, handed to Mr. Tochman for revision, and by him returned to me, copied. The copy was filed, and the original is still in my possession.

While your case was at the stage in its progress to which the foregoing outline brings it, Mr. Tochman addressed a letter to Mr. Bodisco on the 18th of January last, which he

followed up by another, dated on the 22d of that month. So soon as Mr. Bradley and myself had authority to use the letter of 18th January, we addressed a note to Mr. Tochman, apprizing him that we could not henceforth have any further intercourse with him. Annexed to this communication are copies of those letters.* The outline just given, and of which Mr. Bradley will confirm the accuracy, so far as it relates to the period of time since Mr. Tochman's connexion with the case, will enable you to determine how far the author of such letters is entitled to your confidence. They are a tissue of misstatements, in the various forms of direct untruths, deceptive suppressions, and false colorings. Of his pretence, so boldly put forward, that "under his control," and through "his exertions only," "the right of the heirs is already established to the whole fund," your own intelligence will at once enable you to see the gross improbability. Though the right of the heirs is, I regret to say, not yet fully established, something has been done towards that end; but the proceedings already had were under provisions of local laws, with which it would be no disparagement to a foreign advocate of even a high grade, to suppose him less familiar than counsel are, whose daily business it has long been to act under those laws. The fact is, that his ignorance of our laws, and his pertinacity, notwithstanding, in pressing his own conceptions, have all along greatly impaired the utility of his zeal. So far as the records of the Orphan's Court and the Circuit Court can be appealed to as evidence, they falsify the claim which vanity, or a deeper motive, has induced him to assert. Most of the papers prepared by counsel are in Mr. Bradley's handwriting. The only two of any length or moment in Mr. Tochman's, were one of which he was the mere copyist, and another which he filed against our remonstrances—a proceeding certainly useless, and which very nearly became mischievous. The officers of both the Courts would be ready to testify that his share in the oral proceedings before them was equally insignificant. From what I have before said, you will be able to appreciate his claim to having obtained an amendment of our testamentary law; to the discovery of the will of 1816; to his having forced from the administrator the $40,000 bond, &c., &c., &c. Equally unfounded is his story of having secured $5,800 by injunction. He was, indeed, very anxious to apply for an injunction, and it was with difficulty that he was dissuaded from it. We so far yielded to his urgency as to concur with him in giving a notice to the bank, believing that no harm would arise from the measure. In his letter of 18th January, he says: "Had Messrs. Swann and Sampson, and, after their death, Messrs. Fendall and Smith, done their duty; had they not permitted Mr. Bomford to collect the moneys of the estate, and to speculate therewith; we could recover now the whole fund, without any further litigation." It is difficult to determine whether ignorance or falsehood predominates in this passage. The law not only gives the administrator full power to collect assets, but makes it his duty to do so; if he does not apply them to the payment of debts, or invest them, the Court will charge him with interest; he has the control of them till distribution, and the remedy of the distributees is on the bond. Though I know nothing of Col. Bomford's alleged speculations, and Mr. Tochman has never furnished a particle of proof on that subject; yet, as I have before stated, so soon as counsel were definitively engaged in the case, the necessary steps were taken to make the security ample. But, even if the counsel denounced by Mr. Tochman had acted differently, what pretence is there for his declaration that the money could then be recovered without further litigation? The will of 1816 is recorded; but the Courts have yet to decide on the legal effect of the revoking clause in it, and on various other questions arising out of the several testamentary papers.

In a former part of this communication I have explained the circumstances which, in Mr. Bodisco's judgment, made it necessary for the heirs to give a power of attorney to Mr. Bradley and myself—an expedient occasioned by an ebullition of Mr. Tochman's selfish and reckless vanity, which he fully understood from us was never to be used to the prejudice of our agreement with him, and in which he repeatedly acquiesced. Yet he denounces us, in a private letter to the Russian Minister, as having obtained this power "by undue means, and contrary to law," and threatens to sue us. A charge like this, made out by proof against any counsel practising at our bar, ought to, and would, ensure his instantaneous expulsion. Of one of the parties against whom it was directed I shall not, of course, speak. But of Mr. Bradley I may say, what you probably know already, that, while he stands in the very highest rank of learned lawyers and powerful advocates, his character as a gentleman of lofty and stainless honor is equally conspicuous. False, malicious, and secret as the calumny was, it received the only notice it deserved—a notice to the slanderer that we could hold no further intercourse with him. This denunciation of

* These letters having been published by Tochman, I have not thought it necessary to annex them. J. H. B.

us being, moreover, an act which we regarded as an abandonment by him of an agreement under which he had become associated with us, we further informed him that we should not recognise him as any longer entitled to act in the case, which we were exclusively authorized to conduct. He then filed a paper in the Orphan's Court, which at once brought up the question of his authority to act for the claimants. This he rests on a power of attorney from three of the claimants to Mr. Chutkowsky, and sundry letters from Mr. Chutkowsky, and some of the claimants, to himself. His recent extraordinary proceedings made it, we thought, our duty to the heirs to resist his pretensions, and this duty seemed more imperative when, in the progress of the discussion, he admitted that he had made statements to your family similar to those contained in his letters to Mr. Bodisco—an admission, from which it follows that any authority which your belief in those statements may have induced you to give to him, was obtained by false pretences. From the tenor of your letters, viewed together, we supposed also that it was not probably your wish that he should take control over your affairs against the judgment of Mr. Bodisco, on whose good offices you seem throughout mainly to rely. In the progress of his controversy with us he has read in open court confidential letters addressed to him by the counsel associated with him, on the most delicate points of the case, and has even filed those letters in court for the information of the adversary—thus utterly disregarding, in the pursuit of personal interests and feelings, the plainest dictates of professional duty. The effect of this proceeding on your interests is yet to be seen.*

The atrocity of Mr. Tochman's communications to Mr. Bodisco left open to us, you will have seen, no course consistent with self-respect, other than a refusal to hold any further intercourse with him. You will also have seen that a due regard to your interests required also that we should, as we did, resist his sinister efforts to control them; and this consideration became still more imperative when he proceeded to publish the secrets of those whom he claimed to be his clients. We required, in the Orphan's Court, strict proof of his alleged authority, and fully exposed before that tribunal the true nature of his proceedings. We shall take the same course before the Circuit Court, as well in self-defence as to prevent, if possible, any results from his acts injurious to the heirs, before their final resolution can be formed as to the representation of their interests in this country, after they shall have read the exposition just given. I pray you to believe that, in giving it, I have no purpose nor desire to solicit a continuance of my connexion with your case. On this head, you will of course exercise your own will; and any determination you may come to will be entirely agreeable to me. If, however, it should be your wish that Mr. Bradley and myself should act for you, you have no time to lose in executing and transmitting to Mr. Bodisco the power of attorney which he sent to you. In that event you will understand that we shall regard and use it as an *exclusive* authority, though it was originally forwarded to you with a very different object on our part. But, after reading the foregoing narrative, you can hardly deem it necessary for us to say that, under no possible circumstances, can we ever act again in any way with Mr. Tochman.

I have the honor to be, madam, very respectfully, your obedient servant,

(Signed) P. R. FENDALL.†

Mrs. Catharine Estko.

[NO. 3.]

Memorandum, 29*th Nov.* 1845.

The undersigned agree to unite in the prosecution of the claims of the families of Estko and Zulkowski, to the funds left in this country, in the hands of Mr. Jefferson, by Gen. Thaddeus Kosciusko.

We agree, in the first place, to enter jointly as sureties for the fees and costs in the several cases depending, or which may be brought in the Circuit Court respecting the said fund, and to be equally responsible in the event of any one or more of the said cases being carried to the Supreme Court.

We further agree, that out of the compensation which we may receive, we will, after deducting the said fees and costs, make some reasonable allowance for the services heretofore rendered by Mr. Thomas Swann, and by Mr. J. B. H. Smith, respectively, and the residue to divide equally among ourselves.

We further agree, that this arrangement is temporary only, and that at present there is only an authority from the Estko branch to pay ten per cent. of the amount recovered;

* There can be no doubt that this led to our losing a most important point of our case, which we thought and believe we had obtained. J. H. B.

† I concurred in this letter, but do not think it material to publish the one I wrote at the same time. J. H. B.

that Major G. Tochman undertakes to open a correspondence with the Zulkowski branch, and endeavors to obtain from that branch authority to prosecute the claim, and to make a proper allowance for our services; and also with the Estko branch to obtain an increased allowance, and if he shall not succeed in obtaining authority from the Zulkowski branch, and an increased allowance from the Estko branch, that either of us shall be at liberty to withdraw from this agreement on reasonable notice to the others.

It is understood between us, that the increased allowance above mentioned is not to be less than 10 per cent., so as to make the whole 20 per cent.

JOS. H. BRADLEY,
P. R. FENDALL,
GASPARD TOCHMAN.

[No. 4.]

[*National Intelligencer, December* 1, 1845.]

On Friday last, Major G. Tochman, now a member of the bar of New York, was admitted to practice law as an attorney and counsellor of the Circuit Court for the district of Columbia. He has been retained by the heirs of General Thaddeus Kosciusko, to attend several legal suits pending in that Court, conjointly with Messrs. Bradley and Fendall. The assets which Gen. Kosciusko left in this country, and which are claimed by his heirs, the descendants of his two sisters, amount, according to the last account of the administrator, to about $42,000. Besides which he left valuable real estates in Ohio, near Columbus. The heirs commenced the suit in 1825. Their former counsel were the deceased Messrs. Swann and Sampson.

[No. 5.]

My Dear Sir: I have delayed my answers to your letters, to see what view Mr Bodisco is disposed to take.

He is, as I feared, excessively indignant, and has required Mr. Fendall either to get through him a power of attorney for himself, and such associate as he, Mr. Fendall, shall name, (myself for instance,) or to return the papers to him. I see nothing left for us but one of two courses; either to abandon the case, for without the papers we can do nothing, or to let Mr. Fendall take the course required by Mr. Bodisco, in which event our agreement will still stand. He is to receive one-third, and we, each of us, one-third, although it will be impossible that your name can be put in the power; this must be done by a private agreement between ourselves.

You understand this business thoroughly. The papers, the only evidence we have, are, subject to his control, and must be delivered to him if he requires it. It is, therefore, useless for me to enlarge upon it, except to add, that he seems to have been lately more excited by some recent occurrence against you; what it is I know not, but the effect of it is to make him positively and absolutely refuse to recognise any one (particularly you,) who does not receive his authority through the legation.

I have directed a copy of the Intelligencer, containing the notice of Armstrong's case, to be sent to you. The time has not been changed. You will see in the reports of the Senate that I have at last got the petition before them.

I am, very truly, with great respect,
Your most obedient servant,
JOS. H. BRADLEY.

Major G. Tochman, *January 9th*, 1846.

Memo.—I have promised to give Mr. Fendall your reply on Monday, so I beg you will let me hear from you by return mail, and oblige your obedient servant, J. H. B.

[No. 6.]

Washington, *December 2nd*, 1846.

My Dear Sir: Allow me to apologize for the measure which I have taken this morning in filing the bill *quia timet*, against your opinion. I have done it, not for want of a confidence in you, as there is no man for whom I have more respect than for you; and although there has been of late some misunderstanding between us, my confidence in you has not been, and is not, impaired in the least degree.* Other motives which I shall explain to you when you will be more at leisure, led me to filing this bill, and I hope you will fully ap-

*This referred to our disagreement about his filing this bill.—J. H. B.

prove of it hereafter. I write these few lines, only to assure you of my unchanged confidence, and I do it in my own name, as well as in that of the heirs of Kosciusko.

Begging you to accept the assurance of my regard,

I have the honor to be, your most obedient servant,

(Signed,) G. TOCHMAN.

Jos. H. Bradley, esq.

[No. 7.]

Dear Sir: When I returned from the French Minister's, the Judge changed his opinion, and ordered Mr. Roach to issue a citation to Mr. Smith to appear for Bumford on Tuesday next, to show cause why the will of 1816 should not be recorded. I beg leave to inform you thereof, that you may know how the matter stands.

Yours, very respectfully,

G. TOCHMAN.

This was left by him in my office 14th January, 1847.

[No. 8.]

My Dear Sir: You would exceedingly oblige me, if you could prepare the supplemental bill in the course of the week, to file it before the next steamer sails for Europe. If you should have no time, I will do it, if I get the papers; and then we will meet to make such changes as will be agreed upon. I believe that we must make parties all persons named in the wills of 1816 and 1817: also the [This was written in my office, in the presence of the students, on the 18th of January, 1847.]

[No. 9.]

Sir: I was a student in your office during the whole period, from the fall of 1845 to January, 1847, and was there almost every day. During that time, whenever Maj. Tochman was in the city, and up to the very day when you received the letter he had written to Mr. Bodisco, of the 18th January last, he was constantly, and for some weeks previous to that, almost daily in the habit of coming to your office. I was somewhat surprised at the degree of confidence you seemed to repose in him; for I have repeatedly known him to come into the office, and open your drawers, and look over your papers, without saying a word to the students there of his object. This confidence was continued until the morning of the 20th or 21st of January, when, for the first time, you told me not to let him have any papers or to look over any in your absence; and immediately after this he came in, smiling as usual, and you said you were engaged and walked out. He asked me for some papers, and I pretended to search for them, as he did also, looking into your drawers and on your table. Not finding them, he in a very few minutes walked out. This was the last time I recollect to have seen him there.

Your ob't servant,

Jos. H. Bradley, Esq., R. H. LASKEY.

December 21*st*, 1847.

[No. 10.]

C'est pour la seconde fois que j'ose prendre la liberté d'importune votre Excellence, en invoquant l'appui de sa haute protection concernant la succession qui nous est échue à la mort du Général Kosciusko. * * * * Nous supplions très humblement votre Excellence de vouloir bien autoriser à la défense de notre cause Messieurs Coxe* et Bradley, qui seuls possèdent notre confiance.

Nous espérâmes que les papiers envoyés en 1825 par la volonté de feu notre auguste monarque l'Empereur Alexandre seraient suffisants, mais comme les Américains éxigeaient plus de formalités, nous fûmes obligés de rechef à les assembler, et remettre à la Deputation généalogique, ce qui ne contribua pas peu au délai, vû que nos avocats ne vous en informèrent dès long-temps.

Je mets tout mon espoir en ce que, votre Excellence daignera condescendre avec bonté à mon humble demands, et suis avec le plus profond respect de

Votre Excellence,

(Signed) La très humble servante,

6—18 Avril, 1844. K. ESTKO.

Siech-nowieze.

*Memo. Mr. Coxe was retained on the other side.—J. H. B.

[No. 11.]

I was present after the adjournment of the Orphan's Court, and in the court-room on the ninth day of February, 1847, when an unpleasant difficulty occurred between yourself and Maj. Tochman. You and Mr. Fendall were engaged in conversation, when he approached you. I do not remember if I heard what led to it, but I heard you say to him that you had already desired that no farther intercourse should be had between you. Your manner was not excited at that time, but shortly afterwards, in reply to something he said, you remarked, because "I do not consider you a gentleman." He replied, "I am as much a gentleman as yourself." You answered, "I do not bandy epithets; I have already said enough for a gentleman." He then walked past you and towards the door, and, when he got there, turned round and began to say something which I did not hear; but you advanced a step, interrupted him, and said, "If you say (something which I did not distinctly hear) you are a liar or scoundrel, and (then you stopped a moment and added) a coward." Maj. Tochman did not make any reply, and immediately walked away.

ED. N. ROACH.

Jos. H. Bradley, Esq.

[No. 12.]

December 29th, 1847.

My Dear Sir: I was present in the Circuit Court early last spring, on an occasion when you were delivering an argument in the Kosciusko case, and heard you audibly remark to the Court and Bar, upon being interrupted by some observation then made by Mr. Tochman, in substance as follows: "That you had long ago applied to Mr. Tochman such terms of opprobium as no man, possessing the feelings and character of a gentleman, could submit to; that he had passed them unnoticed at the time, and since, and you could say nothing more to him."

This is the substance of my recollection of the affair.

Very truly, yours, H. MAY.

Jos. H. Bradley, esq.

[No. 13.]

Dear Sir: I was not, as you suppose, in the court-room on the occurrence of a difficulty between Mr. Tochman and yourself some time in the month of June last, but came in while some inquiry was being had into the matter, with the view, as I supposed, of informing the court as to the character of certain language used on the occasion by Mr. Tochman. As I entered the room Mr. Tochman was in the act of denying, and did most emphatically deny, using the words or language imputed to him. It was, however, notwithstanding Mr. Tochman's denial, fully proved to the satisfaction of the court, and I think of all present, by Messrs. Richard S. Coxe and John A. Smith, who were thereto interrogated, that the imputed language had been used, and Mr. Tochman was required by the Court to retract and apologize, a member of the court, Judge Dunlop, I believe, furnishing at the time a formal retraction for his signature.

My impression is, that a memorandum of the whole matter was made by Judge Cranch, and read by him in open court, which, if so, will show what afterwards transpired.

Sincerely, your friend,

R. WALLACH.

22*d December*, 1847.

[No. 14.]

Minute read by the Chief Judge in the Circuit Court, on the 2d day of June, 1847.

Armstrong
vs.
Bomford et al.

During the argument of counsel before the court in this cause, on the 2d of June instant, and after Mr. Joseph H. Bradley, a counsellor of this court, had made an argument to the court in behalf of the defendants, Gaspard Tochman, also a counsellor of this court, said, in the presence and hearing of the court, that he protested against the last part of the "argument urged by Mr. Bradley, and wished the court to notice his protest against [it], and that the argument of Mr. Bradley was intended rather to favor Armstrong."

The court deeming such language to be highly improper towards any gentleman of the bar, and disrespectful to the court, require that the same be unequivocally retracted.

Whereupon Mr. Tochman presented a paper in his handwriting, and signed by him, in the following words:

"In answer to the charge of Mr. Bradley, now before the court, the undersigned says, that he expressed himself in these words, 'I dissent from the last part of the argument of Mr. Bradley, and beg your honors to enter my protest on the record, for it is rather calculated [or intended, one of these words was used,] to benefit the interest of the defendant [meaning Armstrong.] The conclusive part of the sentence was expressed as a motive why the undersigned protests against the protested part of Mr. Bradley's argument. It was in no way intended to charge Mr. Bradley that he made argument to benefit the defendant intentionally, or in any [way] deliberately. And if your honors consider this expression as offensive, against which the undersigned solemnly protests, in such case the undersigned submits with respect to the court's intimation, and makes apology. With this express averment and protest, however, that the undersigned did not intend to give his expressions such meaning as the court gives it in the premises.

"G. TOCHMAN."

Which paper the court did not consider a compliance with the order of the court, and suggested that the retraction, if made in the form or to the effect following, would be satisfactory, viz: "I do retract the said language, alleging, at the same time, that I never meant to charge Mr. Bradley with such misconduct or incompetency as the court thinks my language imports."

Mr. Tochman declined making the retraction in the form suggested by the court, but presented to the court the following paper, which he said he was willing to sign, viz: "Mr. Tochman protested against any intention of offending Mr. Bradley in any way, and said that the aforesaid language was used by him as a motive why he protests against the latter part of Mr. Bradley's argument. With this explanation of the meaning of his language he, by due respect to the court, retracts the language he used, if the court thinks it offensive in the way aforesaid."

Whereupon the court said they would take time to consider until to-morrow morning.

A.

Dear sir: In answer to your note, just received, I have to make the following statement:

I was in the court room, on or about the 2d of November last, when you were replying to an argument of Richard S. Coxe, esq., against your motion for leave to file a bill of Capt. Wankowicz. I was seated beside the clerk, and at his desk, and thus nearly opposite Major Tochman and yourself. You were standing immediately in front of the judges, and Major T. was sitting at the District Attorney's chair, about 12 or 15 feet in a direct line from you, and with his face towards me, and his back rather inclined towards you. Two, and I think three, chairs were between you and Major T.; on one of which chairs there was a gentleman sitting. While you were commenting on a decision of a New York court, cited, as I understood, by Mr. Coxe, and showing the want of application to the case at bar, in that fraud had not, and could not, be charged to you, who were of counsel for Captain Wankowicz in a former application, and that in a matter of pure mistake your client should not be called on to suffer, Major T. unexpectedly, and with considerable violence of manner, rose and said—"If there is any fraud, Messrs. Fendall and Bradley have committed it," and immediately took his seat. You instantly attempted to seize and strike him, and would, as I thought, and now think, have done so, but for the chairs, and the gentleman sitting on one of them, which prevented your reaching him until the interference of the Court. I thought, in your haste to reach him, you were about to fall over the chairs. Major T., by rising from his seat, placed a considerable portion of the long table and District Attorney's desk between you and himself. You seemed, throughout your remarks on the case, to be earnestly desirous of avoiding any reference to Major T.'s conduct or name with your argument, and, consequently, his remark astonished me. After you made the rush on Major T. you said to him something like—"You dirty scoundrel and coward, if you repeat your remarks I'll kick you out of the Court room;" to which he, seated, as I have above stated, in a tone just audible to me, replied, "Try it," or, "You had better try it." You, after a few moments, stated your regret at the want of respect to the Court; and urged the repeated interruptions which you had suffered during your argument from Major T., and the suddenness of this last insult, as your excuse, and pledged yourself to the Court that, from that moment, you would, in no way, notice any thing Major T. would say or do, after these remarks. One of the judges said Major T. had made so many interruptions, and they had not been able to restrain him, that if there was any more they should commit him to the custody of the marshal. On Major

T's again attempting to rise and say something to the Court, the Deputy Marshal, my father, who had been sitting near me, and had, by this time, got down and round to the rear of Major T's seat, insisted on silence. The marshal was not in Court that day. I heard Major T., some time during the difficulty, claim the protection of the Court.

I heard not the slightest reference to any agreement by Major T., and believe, if any had been made, I should have heard it, as I was paying considerable attention to you at the time. I had not been present during the earlier stages of your argument, and of course know nothing of the prior interruption in your remarks, except as above stated by one of the judges and yourself. Major T., very soon after, in a violent manner, left the Court room.

I am, respectfully, yours,

WM. R. WOODWARD.

Jos. H. Bradley, Esq.
December 22*d*, 1847.

B.

Washington, *December* 22, 1847.

Dear Sir: In reply to your interrogatories addressed to me, I have to state, that I was present in the court-room on the 2d of November last, attending to your argument on the motion for leave to file the bill of Capt. Wankowiz. I have no recollection of hearing you, on that occasion, make any insinuation to the effect that Major Tochman had fraudulently signed his name, and fraudulently induced Mr. Fendall and yourself to sign your names to a former bill which you had filed, and in which the name of Capt. Wankowiz had been used.

I did not hear you, at any time during the argument of the case then before the court, mention the name of Major Tochman; nor do I recollect that he repelled any imputation of yours, by an appeal to the agreement between yourself and Mr. Fendall.

My recollection of the particulars which led to the collision between yourself and Major Tochman is as follows: You were commenting on a case which had been cited by Mr. Coxe, and were showing the difference between it and the one at bar. I believe you had not finished these comments when Major Tochman arose, and said, "if I am guilty of fraud you and Mr. Fendall are also guilty," or language to that effect. He immediately resumed his seat, and you then advanced towards him, using some words which, owing to my position, I was unable to hear. I did not hear Major Tochman make any reply to the language you addressed to him. He appealed for protection to the court. Judge Morsell said the language used was certainly improper, and Judge Dunlop, after stating that the proceedings of the court had been repeatedly interrupted by Major Tochman, cautioned him against making any further interruptions. After an apology, on your part, to the court, you resumed the argument of the case.

With respect, your obedient servant,

JOHN F. ENNIS.

Jos. H. Bradley, Esq.

C.

Washington, *December* 22, 1847.

Jos. H. Bradley, esq.—

Dear sir: On Tuesday, the 2d November last, I was present in the Circuit Court during your reply to an argument which had been previously made by Mr. Coxe in the Kosciusko case. You were suddenly interrupted by Major Tochman, who rose up and said, in substance: "If there is any fraud, Mr. Bradley and Mr. Fendall are guilty of the fraud," and sat down. You rushed towards him, and said, "You dirty scoundrel and coward, I will kick you out of court if you do not behave yourself," or words to that effect. I did not hear any provocation from you to call forth the expression first used by Major Tochman. The marshal was not in court. The deputy marshal was at his desk. I saw no person come between yourself and Major Tochman, though there was a gentleman sitting in one of the three or four chairs which were between you, and which seemed to me to impede your progress. I did not hear Major Tochman say another word until he appealed to the court for protection. I also heard you make an apology to the court for the excitement you had displayed, and a pledge that nothing which Major Tochman should thereafter say should receive from you any notice whatever.

Very respectfully, your obedient servant,

A. H. LAWRENCE.

D.

WASHINGTON CITY, *December 22d*, 1847.

I was engaged at the clerk's desk in the Circuit Court room at the time of the late difficulty between Mr. Bradley and Major Tochman, and did not hear what was going on, until startled by the remark of Major Tochman, that "if there is any fraud, Messieurs Bradley and Fendall are guilty of the fraud." Major T. then took his seat. Mr. B. was 12 or 15 feet from him, with several chairs between them, and one or more persons occupying a portion of them. Mr. B. rushed at him and said, "You scoundrel, I will kick you out of the court if you do not behave yourself," or something to that effect, and appeared as if he was going to execute his threat. The Court (Judge Morsell, I think,) promptly interfered, before Mr. B. got within striking distance. Major T. claimed the protection of the Court. Mr. Bradley took his seat, but soon rose and apologized to the Court for having given way to his feelings, and said it was owing to the great provocation, and the suddenness of it; and he assured the Court that nothing that Major T could say thereafter would be noticed by him.

Judge Dunlop remarked that the proceedings of the Court had been repeatedly interrupted by Major Tochman, and that they must put a stop to it. About this time the deputy marshal got there from his seat. I have no recollection of Major T's saying more at any time than I have mentioned above. Major T., with a good deal of violence in his manner, left the Court room.

JNO. A. SMITH.

JOS. H. BRADLEY, ESQ.

E.

DECEMBER 24th, 1847.

SIR: In reply to your inquiries, I state, that at the time you refer to, which was near about the first of November, I was acting as the bailiff of the court, and standing two or three feet from where Major Tochman was sitting. He was between you and me, and about ten or twelve feet from you, at the end of the table. You were speaking, and he suddenly jumped up and said: "If there is any fraud, Mr. Bradley and Fendall are guilty of the fraud;" and then he immediately sat down again. You jumped right at him, and stumbled over some chairs, and I think a gentleman, sitting at the long table. But before you got to him he was sitting down. Your face was right towards me, and as he sat down, you said: "You are a scoundrel and coward; if you assert that again, I'll kick you out of court." He had his face turned partly to me, not to you, and muttered something, but I could not hear one word. The court called on you, and you immediately sat down. I did not stir from my place. The deputy marshal did not come there till after you sat down. Major Tochman then appealed to the court for protection. He had before that interrupted you several times; but that you did not seem to mind much. When he charged you with fraud, it was so sudden, you did not take time to think, but came right at him. When Major Tochman asked the court for protection, one of the Judges told him they had indulged him, as he was a stranger; but they had told him before he must behave himself, and if he did not, the court would be obliged to put him in the custody of the marshal. You apologized to the court, and begged pardon, and said you had not mentioned his name during the whole court; and pledged yourself, no matter what he should say or do, you would never take notice of him again. I don't pretend to give the precise words, of course.

W. H. BARNACLO.

JOS. H. BRADLEY, ESQ.

[*Mr. Fendall's statement.*]

WASHINGTON, *December* 23, 1847.

MY DEAR SIR: The material facts within my knowledge, bearing on the topics of inquiry contained in the first paragraph of your letter, will be found in my statement, under date of 23d February last, addressed to Mrs. Estko; a copy of which statement is in your possession. The substance of it had, before its date, been orally stated in the Orphan's Court, in the course of my comments on Mr. Tochman's letters of 18th and 22d January, 1837, to Mr. Bodisco; on which occasion I proclaimed my purpose of preparing and transmitting to the Estko family an exposition of the matters under discussion. To the contents of the part here referred to of the statement to Mrs. Estko, a few other particulars, which seem to be called for by the first part of your letter, may now be added.

Before Mr. Tochman's first conversation with me on the subject of the Kosciusko cases,

the vexation of the previous delays had nearly determined Mr. Smith and myself to terminate our connexion with those suits. When Mr. Smith avowed to me his final resolution to withdraw from them, I informed him that if he did so, I too would withdraw; and it was only on his urgent remonstrance against such a proceeding on my part, that I consented to remain without him. When I apprized you of his desire or determination to retire from the Kosciusko cases, I informed you of the position towards them of Mr. Bodisco, the Russian minister, from whom exclusively my authority was derived; that, in consequence of Mr. Tochman's political relations to the Russian Government, and particularly of his severe animadversions, as a public lecturer in the United States, on Mr. Bodisco's Government and country, that Minister could not officially recognise Mr. Tochman as counsel n cases which, at the instance of the heirs of Kosciusko, had been committed to the charge of the Russian Legation; but that Mr. Bodisco had, nevertheless, expressed his willingness, and had indeed recommended such a proceeding, that the counsel employed or recognised by the Legation should connect Mr. T. with the cases by any act of theirs which would not conflict with Mr. Bodisco's position, nor bring Mr. T. into personal communication with him. Such an arrangement was, we supposed, made by the agreement of 29th November, 1845, entered into between ourselves and Mr. Tochman, who had before, in terms as delicate as I could think of, but distinct beyond the possibility of misconception, been informed by me of the Minister's views of duty and propriety as to the subject. In forming that agreement, I acted as counsel employed by the Russian Legation; I considered you, and you considered yourself, as succeeding Mr. Smith in the cases, and acting in the same relation to them; while Mr. Tochman acted under an appointment by Mr. Chutkowsky, who claimed to have a power of attorney from some of the parties. The notion, subsequently put forward by Mr. Tochman, that I was employed by *him*, certainly never entered my head, nor could I have supposed that it could possibly enter the head of any one else. I take this occasion to say that, since my earliest connexion, in any form or in any degree, with the cases, while Mr. Bodisco has manifested a generous and untiring zeal for the rights of the heirs of Kosciusko, and has guarded those rights with a solicitude which could not have been exceeded in a matter of personal interest to himself, he has never sought to control our conduct in the cases. I do not regard the circumstances already mentioned as constituting an exception to the generality of this remark.

Very shortly after the agreement of November, Mr. Tochman's course was such as to invite the conflict which the interests of our clients made it important to avert, and induced Mr. Bodisco to require that either powers of attorney in your name and mine should be prepared for transmission to the heirs, or that the documents which I held under his authority, and which formed the mass of our proof, should be returned to him. I informed you of this state of things, and presented for your consideration my own views of professional duty, in the contingency of an absolute demand of the papers, and of the probable effects of their surrender on the interests of the heirs. In my opinion, on both these points you concurred. I requested you to communicate to Mr. Tochman the information which I had given to you, disclaiming at the same time any purpose, as I felt certain that you also would do, of using the proposed powers of attorney to the prejudice of our agreement of the preceding November. Accordingly, in your letter of 9th January, 1846, to Mr. Tochman, you expressly say that, in the event of the execution of the powers, "*our agreement will still stand.*" Either I saw that letter before it was mailed, or immediately after saw a copy of it in your possession. Subsequently learning from you that Mr. Tochman, though at first incensed at the suggestion of the new powers, had on reconsideration waived his objections, I prepared one for the Estko, and another for the Zulkowski, branch of the claimants, exhibited one or both of them to you, and sent them to Mr. Bodisco for transmission to Europe. My impression is, though I cannot speak positively on this head, that before those papers left my hands, one of them was shown to Mr. Tochman. I am positive, however, that afterwards and repeatedly, in my presence, he manifested his acquiescence in them. On one occasion, when I referred to them as growing out of the peculiar circumstances of the case, and as not practically affecting the agreement of November, he said, as I fully remember, "Ah, well, Mr Bodisco can take his course, and we can take ours." This remark struck me, at the time, as expressing, in another form, the idea which I had just conveyed to him. Subsequent events would seem to show that the remark had a hidden meaning, of which I had no suspicion.

Mr. Tochman's letters of 18th and 22d January, 1847, in the months of January and February, in the Orphan's Court, became frequently the subject of reference, and once of minute analysis and full exposition. On one of those occasions, after the Court had closed its business for the day, some conversation ensued between you and myself; Mr. Tochman attempted to take part in it; you reminded him that you had already apprized him that you could hold no further intercourse with him. Something was then said on both sides, which either did not attract my attention or has escaped my memory. What I re-

member to have next passed, is a remark made by you that you would not bandy epithets I also remember that Mr. Tochman said something in a hurried and indistinct tone about some letters which you had written to him; your saying to him that he was a scoundrel and a blackguard; and that, in answer to some remark of yours, he used the expression, "as much as you are yourself," or "no more than you are yourself." When you uttered the words I have cited, he was standing in the doorway, and immediately afterwards he went away.

Your next head of inquiry is the incident which occurred in the Circuit Court in June last, on the argument of the demurrer to the bill in the nature of a bill of review, which had been filed in the case of Armstrong vs. Kosciusko's administrator and Kosciusko's heirs. Concurrently with this demurrer was argued a motion which had been made by Richard S. Coxe, esq., of counsel against the heirs, to remove from the files of the court an answer to the bill of the complainant Armstrong, which had been filed on the 19th of October, 1846. The answer had been sworn to by Ignatius Chutkowsky, as agent or attorney in fact for the heirs; and the alleged irregularity of this proceeding was a principal ground relied on by Mr. Coxe in support of his motion. After arguing at length the demurrer, you endeavored to sustain the answer, as having been filed by consent of counsel and by order of the court, and as being, in this particular and extraordinary case, entitled to be received on the great general principles of chancery law. You expressed your regret that your own recollection and that of Mr. Coxe should differ as to the circumstances under which the answer was filed; and, at the close of your argument remarked, that candor required you to state to the court, that both you and myself, after carefully examining the question, prior to the filing of the answer, entertained doubts whether an answer so sworn to was admissible, merely on the authority of adjudged cases; but again asserted its admissibility on principle. Mr. Tochman rose and remarked, that he adopted the first part of Mr. Bradley's argument, but objected to the last part, as being intended to benefit the other side, or to benefit the defendant, or to benefit Armstrong. I am not certain which of these three forms of expression he used at that particular time; for he used them all in the course of the scene, which soon became confused, and my seat was in another quarter of the room, at a considerable distance from that occupied by him. But I am certain that, at the particular time spoken of, he did use the word "*intended.*" You rose, and addressing the court, asked, with emotion, if they would permit so gross an imputation on counsel to be made in their presence. My impression at the time was, that the judges had not, or that all of them had not, distinctly heard the words. No instant answer was given to your appeal; whereupon, turning to Mr. Tochman, you said—as I recollect the words—"If the court does not notice you, and you do not retract your language, I will horsewhip you before sunset, and you may prepare yourself." The court then interposed, inquiring what precisely were the words uttered by Mr. Tochman. You repeated them. The Chief Justice remarked, that they were highly improper as it regarded yourself, and disrespectful to the court, and that the court required an immediate apology. Mr. Tochman gave his version of his language, differing from what he had said, and eliciting plain indications of dissent from the bystanders. Mr. R. S. Coxe, counsel on the other side, and Mr. John A. Smith, deputy clerk of the court, being called on for that purpose, stated to the court what Mr. Tochman had said, and, in substance, as I have here stated it. The court required him to retract his language and to apologize for it. A good deal then passed, the details of which I do not recollect. A minute of what occurred was made by the Chief Justice, and read by him in open court. To that paper I refer you.

At an early day of the last term of the court, the opinion of the court on the motions which had been argued at the prior term was delivered, sustaining the demurrer. The opinion was verbal, and to the effect that the court did not consider the statutory proceeding authorized by the Maryland law of 1795, as being applicable to the case. In notice of some remark at the bar, one of the judges intimated that the action of the court was not founded on any supposed error in the bill in the nature of a bill of review, which had been filed; and that the court, or himself, (I did not distinctly hear which,) considered the bill perfect. About this time, Capt. Wladislaus Wankowicz, one of the Zulkowski branch of the heirs of Kosciusko, arrived in this city. He had not been made a party defendant to Armstrong's bill of complaint; but under a misapprehension of the extent of our authority, and it being proper that all parties in interest should be parties in action, we introduced his name as one of the complainants in the bill of review. Capt. Wankowicz, however, assured us that he had never given such authority, and was wholly ignorant of the proceeding till he arrived in this country. He further informed us of the circumstances which had prevented any action on his part till the present time. On careful consideration, we came to the conclusion that the facts set forth by Capt. Wankowicz, in an affidavit which is of record in the court, entitled him to have the decree in Armstrong's case opened, and

to have it opened generally. At his instance, we filed a petition for a bill in the nature of a bill of review. Early proceedings on the application were repeatedly interrupted by interventions of Mr. Tochman; one of which was to declare that Capt. Wankowicz was entitled to a very small share of the fund in controversy; a declaration of which the opposite counsel did not fail to avail himself. Both you and myself stated to the court that, in this particular case, we were, without dispute, the exclusive counsel for the petitioner; and, in view of past incidents, objected to interference from any unauthorized quarter. Mr. Tochman claimed the right to interpose, on the ground of his being counsel for the Estko branch, who were interested in the result of the present application; adding that a motion of his own, made on their behalf, to amend the bill of review, and thus open the decree, was pending. The court determined that he had no right to be heard, against our will, on our motion, but that when it was over he should be heard on his own. One of the numerous positions taken by Mr. Coxe in opposition to our petition was, that it was not competent for the petitioner to disavow, to the prejudice of Armstrong, our act making the petitioner a party to the bill of review. Mr. Coxe insisted that the court would not permit the disavowal of an act done by an attorney, even in cases of fraud, except where the party benefited was connected with the fraud, or the attorney was wholly irresponsible; exceptions, he remarked with a smile, of course inapplicable to the present case. In replying, on the 2d of November, to Mr. Coxe, you contended that he had laid down his proposition too narrowly; that the authorities which he had cited in support of it were cases of law; and that mistake was also a ground of exception to the general rule. You then remarked that this was a case of mistake as to our authority to appear for the Zulkowskis, when the bill of review was filed; and were proceeding to state the circumstances under which the mistake was made. To my great surprise Mr. Tochman rose, in anger, and exclaimed, "that is an insult," and went on to say something about his having an "implied power of attorney" to act for the Zulkowskis. You then, very mildly, reminded the Court that you had not, in the whole course of your argument, mentioned his name, and adverted to your forbearance (which certainly was great) under his repeated interruptions. I observe that in his petition to Congress he says: "Mr. Bradley, during the argument of that motion, permitted himself to insinuate that I had fraudulently entered on the original bill of review my name as attorney of Capt. Wankowicz, and fraudulently induced him and Mr. Fendall to enter their names as his associates." I heard no such insinuation from you. I may add that I do not believe that such a suspicion was entertained by you; as you had never expressed it in any of our free and frequent private conferences, in the course of which Mr. Tochman's injurious conduct to us was often a subject of conversation.

The incident just referred to being disposed of, you resumed your argument. On the evening before, I had examined the point under discussion, and had noted some authorities maintaining your view of it. I was sitting at my desk, which is on the side of the court room opposite to the District Attorney's seat, then occupied by Mr. Tochman; was engaged in selecting from my notes a list of the books containing the cases which I desired to hand to you, and had just given a memorandum of them to a bailiff of the court, with a request that he would step to my office for them, when I was roused by hearing you exclaim, in an excited tone, "You dirty scoundrel, if you don't behave yourself I will kick you out of Court." I passed over to your seat, which was at the table in front of the jury box, and ten or twelve feet distant from Mr. Tochman's seat, the interval being occupied by two or three chairs, and inquired of you what he had said. You then informed me that he had said to you: "If there was any fraud, you and Mr. Fendall were guilty of it," words which I had not before heard, in consequence of the pre-occupation, just stated, of my attention. From the same cause I had not observed your advance towards him. On the instant when the words before mentioned were spoken, Mr. Tochman claimed the protection of the Court, and Judge Morsell, in a tone of grave displeasure, which, to every one acquainted with the demeanour of that learned Judge on the bench, must have been affecting, said: "Mr. Bradley, such language in Court is highly improper, and cannot be tolerated"—The Judge had not, apparently, finished the sentence which he was uttering, when you interrupted him by asking pardon of the Court for the language you had used. You admitted that it was unfit to be used in the hearing and presence of the Court, and unbecoming to yourself; but you prayed the Court to consider the wanton and gross provocation which you had received, preceded as it had been by annoyances so disorderly as to have elicited rebuke from the bench. You then assured the Court that nothing hereafter proceeding from the same source should, so far as you could possibly prevent it, obtain from you the slightest notice.

This is the substance of what you said, for I do not aim to give the exact words. They were pronounced in a tone of deep feeling; and as little sounded like a "mock apology,"

which Mr. Tochman, in page 9 of his petition to Congress, describes them to have been, as the remark of Judge Morsell, which I here quote, was like the account of it given in that paper. The Court was understood by its silence to accept your apology. Mr. Tochman began again to address the Court. Judge Dunlop observed, that the Court had, through indulgence to Mr. Tochman as a stranger, passed over his frequent irregularities, but that it could permit them no longer; and that, if they were continued in contempt of the authority of the Court, the marshal must do his duty and take him into custody. It was at this moment that the Deputy Marshal descended from his seat, which is at a circular desk or bench some feet above the floor of the court room, and separated from it by a railing. He said something to Mr. T. in the way of warning against further disorder. I had not before noticed him as being near yourself and Mr. Tochman during the collision; and the Marshal himself was not in the court room, at any period of the day, when it occurred. Just after Judge Dunlop made the remarks already cited, Mr. Tochman left the court room, apparently much excited. The account just given, of the incidents following your reply to Mr. Tochman's charge of fraud, differs materially, you will observe, from the statement in page 9 of his petition. I have only to add, in view of that statement, that I saw nothing like laughter on the Bench.

I am, my dear sir, very truly yours, &c.,

P. R. FENDALL.

JOSEPH H BRADLEY, ESQ.

[*Mr. J. B. H. Smith's statement.*]

WASHINGTON, *December* 24, 1847.

MY DEAR SIR: Your note of the 22d instant, containing certain interrogatories, with a request that I should state my knowledge in relation to the subject of them, is before me. Without repeating the interrogatories, I will proceed to answer them generally.

Whether Major Tochman was personally apprized, when he first made his appearance here, that the Russian Minister would not recognise him as counsel in the Estko causes, I know not, except from conversations with Mr. Bodisco. My full conviction, however, is, that he was so apprized. From Major T. I derived no knowledge, my only intercourse with him being confined to two or three interviews, when he called at my office to request me to deliver to him, or to allow him to examine, certain papers relative to these causes. These papers having come into my possession, as the associate of Mr. Fendall, from Mr. Bodisco, I declined exhibiting them without the sanction of the latter. His consent was never, to my knowledge, given.

As to the collision between you and Major Tochman, on the 2d of June last, in the Circuit Court, I have no distinct recollection. The perusal, however, of your statement of the matter, in one of your letters published in a pamphlet you were kind enough to send me, has to a certain extent refreshed my memory, and it strikes me that your statement is substantially correct, and accurate.

Of the collision, however, between you and Major T., which happened in November last (I believe,) my recollection is much more distinct. You were answering an objection taken by Mr. Coxe to the new bill of review offered to be filed by you, that the parties to the new as well as the first bill of review were the same. Your answer to this was, that though this appeared to be so by the record, yet in fact it was not the case, inasmuch as the counsel in the first bill had used the names of some of the complainants in the new or second bill without express authority from them. In the course of your remarks, you used the word "fraud," at the same time expressly stating that, of course, "no fraud" could be ascribed to the counsel of the first bill. Major Tochman then suddenly arose and remarked, "if there is any fraud, Messrs. Bradley and Fendall are guilty of the fraud." Upon which, you immediately advanced towards Major T. in a menacing manner; but, being impeded in your advance, said to him, "you dirty scoundrel and rascal I will put (or kick) you out of Court unless you behave yourself." Major T. appealed to the Court for protection. The Court commanded order, and that you both should be seated. Major T. continuing his interruptions, the deputy marshal placed his hand upon his shoulder, and directed him to be quiet, and to take his seat. You then arose and apologized in the fullest manner to the Court for your forgetfulness of the respect due to the Court as well as to yourself. This is substantially as I recollect. I did not hear Major T. utter the word "try," in reply to your threat of putting him out of Court; and I am certain that the only interference of the deputy marshal was the placing his hand upon Major T., as above stated. I have thus given you all the information my memory suggests upon the immediate subject of your inquiries.

Before, however, closing this note, I would, with your permission, refer briefly to my connection with these Estko causes, inasmuch as Major Tochman has thought fit, in his letters published in his pamphlets, (before referred to,) to charge Mr. Fendall and myself with neglect of our duties; and I would here expressly state, that if there was any neglect in this matter, (of which I am wholly unconscious,) I am solely chargeable with it, and Mr. Fendall should be entirely exonerated. Some time in the year 1842, (as to dates I cannot be certain,) Mr. Fendall invited me to join him in these causes, some of the papers in which had been transferred to him by Mr. Swann. These papers were all informal, and could not be used in evidence. The immediate matter at that time pending was the bill of complaint of one Klimkiewicz against the administrator of Kosciusko, the Estkos and others claiming to be heirs and devisees of Kosciusko. Klimkiewicz claimed to be the sole heir, and in support of his pretensions had procured and filed several depositions, which, if true, proved completely his claim. Publication, under the statute, had been made vs. the Estkos and others, and a decree *pro confesso*, for want of an answer, was about to be had against them. In this state of the cause I prepared an answer (which, I need not state to you, our laws require to be signed and sworn to by the defendants before it can be filed in the Court) for these Estkos, and gave the same to Mr. Bodisco, the Russian Minister, to be forwarded to these parties, with the most particular directions as to evidence, &c., &c. This answer, and the documents required, we could never procure while I was connected with the case. The only course of defence left to us was to cause delay, and this we succeeded in procuring, until the death of Klimkiewicz put an end to his claim, though at every term of the Court Messrs. Key and Mason most strenuously pressed his claim. Of my continued exertions in procuring this delay, you may have some recollection; you, as the attorney of one Chutkowski, being interested in the success of this effort.

Through all this course of years, we repeatedly urged upon Mr. Bodisco the absolute necessity of procuring this answer and the proper documents; and he, I believe, frequently communicated the necessity to the Estkos; and from the time we first entered upon the business to the time of my separation from it, we fully advised Mr. Bodisco of our unwillingness to undertake it, unless proper provision were made for the costs. As for our fee, we always consented that it should be contingent, and never even named any definite amount, leaving that to his and the Estkos' sense of propriety; but, as to the costs, I repeat, we were positive, and only consented to act for the time on the defensive in Klimkiewicz's suit, until this matter of costs was settled; and, in the mean time held what papers we had subject to the order of Mr. Bodisco. In this state of the matter, Kosciusko Armstrong filed his new bill of complaint for his legacy, to which we could not appear without involving ourselves beyond what we had consented; and, indeed, had we been willing to incur this new responsibility, we had no means of making a defence, for want of an answer from the Estkos and the necessary documentary and other proof, to procure which would have been accompanied with considerable expense.

We determined to make another and a final effort to obtain the necessary papers from the Estkos. I accordingly prepared another (thinking that perhaps the first had never reached the parties) answer, (this was just before the death of Klimkiewicz,) and spent the greater part of a day with Mr. Stoeckel, Secretary of the Russian Legation, explaining the matters to him, and with him preparing a letter to the parties, giving them specific instructions, and announcing to them the necessity of remitting to the Russian Legation here an amount sufficient to cover the costs of a litigation likely to be long, complicated, and to go through all our courts before a final adjudication, and most expressly and distinctly stating our intention to withdraw unless our requests were complied with. To this last application we never received any reply; and matters were in this condition when Maj. Tochman, with his power of attorney, made his appearance. It is unnecessary for me to detail all that then took place. It is sufficient for me to state that I continued unwilling to become security for the costs of prosecuting these claims, and, with the consent of Mr. Bodisco and Mr. Fendall, carried into execution the resolution I had before made by retiring from the cause as counsel of the Estkos. Should any other explanation of this last matter be necessary, Mr. Fendall will, I am sure, give it cheerfully.

Regretting to have imposed upon you so long a narrative, I am, most truly, yours,

J. B. H. SMITH.

To Jos. H. Bradley, esq.

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